



KATIE SWEENEY  
*General Counsel*

September 21, 2017

Dr. John G. "Jerry" McGinn  
Acting Deputy Assistant Secretary of Defense  
Manufacturing and Industrial Base Policy (MIBP)  
3330 Defense Pentagon, Room 3B854,  
Washington, D.C. 20301-3330

RE: DoD Actions to Implement E.O. 13806

Dear Dr. McGinn:

On July 21, President Trump signed Executive Order 13806, "Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States." Specifically, the order directs the U.S. Department of Defense (DoD), in coordination with other federal agencies, to review our nation's manufacturing and defense industrial base and supply chain resiliency to determine how best to strengthen it against existing and future risks. The National Mining Association (NMA) offers these comments to assist DoD in its implementation of the Executive Order. NMA members include producers of most of the nation's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment and supplies; and engineering and consulting firms, financial institutions and other firms serving the mining industry.

Although DoD does not regulate mining in the U.S., clearly the metal and minerals that the domestic mining industry provides are of strategic interest to the department since these materials serve as the front end of the supply chain for all defense applications. As it moves forward to implement the E.O., DoD should acknowledge the importance of domestic metals and minerals to meet our defense needs, especially products critical to protecting our men and women in uniform. As such, DoD alongside other agencies should review how permitting and regulatory burdens on the hardrock mining industry increase supply chain vulnerabilities of the defense industrial base and provide recommendations for improvements. In doing so, the DoD would fulfill Sec. 2 (a), Sec. 2 (d)(ii)(iii)(vi), Sec. 2 (e), and Sec. 2 (f) of E.O. 13806.

The focus on our nation's manufacturing and defense industrial base and supply chain resiliency is more important than ever and long overdue. Without the raw materials

necessary to equip our servicemen-and-women to do their jobs, the U.S. cannot hope to maintain the commitment made to these dedicated individuals. The serious question remains, however, about where those materials will be sourced if we fail to pursue proactive policies that promote domestic mining of metals and minerals.

In the Executive Order, President Trump correctly highlighted the concern that supply chains:

“are often long and the ability of the United States to manufacture or obtain goods critical to national security could be hampered by an inability to obtain various essential components, which themselves may not be directly related to national security. Thus, the United States must maintain a manufacturing and defense industrial base and supply chains capable of manufacturing or supplying those items.”<sup>1</sup>

Further, the President expressed alarm about the loss of American manufacturing capability and jobs and noted that additional losses threaten “to undermine the capacity and capabilities of United States manufacturers to meet national defense requirements.”<sup>2</sup> While this is a very real concern, of equal threat is the further deterioration of domestic metal and mineral supply chains, an issue that must be considered as DoD conducts the review of our nation’s manufacturing and defense industrial base and supply chain resiliency.

### **Minerals are Essential to National Security and Defense**

History has shown that innovation and adaptability is essential for sustaining a strong national defense but the importance of a secure supply of metals and minerals should not be overlooked. These building blocks are essential components of our increasingly high-tech defense systems such as the M1A1/2 Abrams battle tank or the Stryker family of vehicles, the radar and guidance systems that enhance the capabilities of the F-35 JSF or the infrared surveillance of missile defense early warning systems. We must ensure that our military has secure and reliable access to the domestic raw materials needed for these systems.

The need for metals and minerals for national security span beyond the oft-discussed rare earth elements. In fact, DoD uses as much as 750,000 tons of minerals each year in technologies that protect the very troops protecting our nation. Metals such as copper, lead and nickel, platinum and silver, titanium and molybdenum – all are used in military equipment, weapon systems and other defense technologies. As an example, the mineral beryllium is used to reduce weight and improve guidance performance in fighter jets and NASA technologies such as the mirrors on the James Webb Space Telescope.

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<sup>1</sup> Sec. 1 of Executive Order 13806.

<sup>2</sup> *Id.*

Even the “100,000 ton message to the world”<sup>3</sup> – the recently commissioned USS Gerald R. Ford and its electromagnetic catapults – require vast sums of raw materials, including an astonishing four million pounds of weld metal.<sup>4</sup> Many of these materials are found domestically but have been increasingly sourced outside of our borders. According to the U.S. Geological Survey (USGS), the U.S. is at a record high for dependence on foreign sources of minerals. Additionally, despite the strategic importance of minerals and metals to our national security, the United States ranks behind China, Russia, Chile and South Africa in terms of production and continues to fall. No amount of stockpiling can alleviate this level of risk to our domestic manufacturing and defense industrial base. Many of the minerals and metals the DoD has deemed strategic and critical remain locked underground – inaccessible for military use – because of duplicative, inefficient permitting processes, limitations on land access, and unnecessarily burdensome and harmful regulations that stifle investment in new and existing mines in the United States and prevent the domestic mining industry from reaching its full potential.

In congressional testimony before the House Subcommittee on Energy and Mineral Resources, Brett Lambert – former Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy – made the point that “there is not a single defense industrial base that uses a unique set of minerals. There is a defense market serviced by a diverse selection of companies which span, and often reflect, the greater global economy for goods and services.”<sup>5</sup> He additionally stressed that the “entire manufacturing base of the United States relies upon access to basic materials needed for producing intermediate products, components, and finished products, which require robust and diverse material supply chains.”<sup>6</sup> Another important point made in Lambert’s testimony that DoD should strongly consider during its review was that, “because the base upon which defense draws generally represents only a small share of the overall demand for U.S. materials, it depends on a market sustained by commercial products. A vibrant commercial manufacturing base is therefore vital for reliable access and reasonable prices for those products which enter the defense supply chain.”<sup>7</sup> This further makes the case for a strong domestic mining industry that provides a reliable and sustainable stock of raw materials to both commercial and defense manufacturers. Promoting greater use of domestic metals and minerals will significantly reduce volatility risks and vulnerabilities up and down the supply chain.

In 2014, SNL Metals & Mining (SNL) examined the extent to which mining contributes to the domestic manufacturing industry, which in turn is critically important to support the

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<sup>3</sup> President Trump’s July 22 [remarks](#) on commissioning the USS Gerald R. Ford.

<sup>4</sup> <http://www.engineering.com/DesignerEdge/DesignerEdgeArticles/ArticleID/15330/Engineering-Destruction-The-Terrifying-and-Awesome-Power-of-The-USS-Gerald-R-Ford.aspx>

<sup>5</sup> Brett Lambert Congressional [Testimony](#) - July 24, 2014.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

needs of defense and industrial applications. The study, *U.S. Mines to Market*<sup>8</sup>, found that a gross structural mismatch between domestic minerals supply and demand creates an obstacle to continued growth in the manufacturing industry. In addition, the study highlighted a trend referred to as re-shoring in which manufacturing activity returns to the U.S. This activity is being driven by manufacturers' desire to reduce the risks in their supply chains, which are highly complex, fragmented and multilayered, often extending to more than seven tiers of suppliers for any given product. As such, manufacturers are keenly interested in securing access to domestic minerals. Yet as discussed above, despite our nation's abundant mineral wealth, we are becoming increasingly reliant on foreign sources of minerals to meet the needs of domestic manufacturers. Today, less than half of the mineral needs of U.S. manufacturing are met from domestically mined resources.

Our nation's mismatched import reliance is in direct conflict with President Trump's executive policies related to domestic manufacturing, infrastructure, energy production, and national defense and continues to promote a mineral reliance that is risky, shortsighted, and unsound. House Natural Resources Committee Chairman Rob Bishop, who also serves on the House Armed Services Committee, expressed his concerns saying, "rather than harness our abundant mineral resources for the betterment of our national security, economic stability, and basic necessities, we have a senseless permitting process that promotes mineral dependence."<sup>9</sup>

### **Impact of U.S. Reliance on Foreign Sources of Minerals**

According to the most recent U.S. Geological Survey (USGS) *Mineral Commodity Summaries*<sup>10</sup>, the U.S. is now greater than 50 percent reliant upon foreign countries, such as China, for 30 different metals and minerals – and 100 percent for an additional 20 minerals. That is half of the naturally occurring elements on the periodic table and an all-time high. This information was first gathered by USGS in 1978, and at that time, the U.S. was only 100 percent import reliant on seven mineral commodities, and more than 50 percent import reliant for 25 mineral commodities.

Import reliance offers a very basic, threshold metric for diagnosing supply chain vulnerability. The level of risk may vary on a case-by-case basis for individual commodities, depending on where they are coming from and what they are being used for. When domestic manufacturers source materials overseas, there is always potential for supply chain vulnerabilities. Take for example, the confluence of world events in 2014 impacting the availability of palladium, a platinum-group metal used in catalytic converters to reduce automobile emissions, bulk-chemical production, and petroleum refining. According to the USGS, at that time the U.S. was 60 percent reliant on foreign sources of palladium. Approximately 33 percent came from Russia and another 28

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<sup>8</sup> SNL Metals & Mining, *U.S. Mines to Market Study* (2014)

<sup>9</sup> House Natural Resources Chairman Rob Bishop's *Statement on Mineral Dependence* – October 22, 2015

<sup>10</sup> [USGS Mineral Commodity Summaries 2017](#)

percent from South Africa. Given the U.S.' and other countries' reliance on these sources, it was no wonder that palladium prices spiked and supply concerns grew with the news of possible Russian sanctions in response to military intervention in Ukraine, which coincided with an extended strike by 75,000 mine workers in South Africa. World events can very quickly alter the ability of domestic manufacturers to access critical metals and minerals.

As the risks of sourcing metals and minerals internationally continue to compound, DoD needs to look beyond the concept of stockpiling for solutions and investigate ways to encourage the exploration and development of a secure domestic supply chain of the raw metals and minerals necessary for commercial and defense applications. Such an approach is entirely consistent with the purpose of Strategic and Critical Materials Stockpile Act (50 U.S.C. § 98 et seq.) to:

Provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and **development of sources of such materials within the United States** and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources or a single point of failure for supplies of such materials in times of national emergency.<sup>11</sup>

Even excluding unanticipated geopolitical events, competition for minerals will become increasingly fierce to meet the demand driven by growth in global population and the rise of new economies. A 2012 KPMG report, which looked at sustainability “megaforges” that will impact “each and every business” over the next 20 years, found that access to minerals and metals will be of greater concern.<sup>12</sup> The report predicts by 2030 that 83 billion tons of minerals, metals and biomass will be extracted from the earth, or 55 percent more than in 2010. The study authors conclude: “the message is clear; over the next 20 years, demand for material resources will soar while supplies will become increasingly difficult to obtain.”

Understanding the existing trend of increased import-reliance, in combination with authoritative predictions of scarcity, makes clear that the time has come to take steps to improve U.S. resource security through increased domestic production. As the Rand Corporation warns, a failure to do so could have profound impacts on future growth, particularly for the manufacturing sector:

While the United States has extensive mineral resources, and is a leading materials producer, a high percentage of many materials critical to U.S. manufacturing are imported, sometimes from a country that has the dominant share of a material's global production and export. In this situation, U.S. manufacturers are vulnerable to export restrictions that limit their access to these

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<sup>11</sup> FY2016 Strategic and Critical Materials Operations Report to Congress

<sup>12</sup> 2012 KPMG Report – [Expect the Unexpected: Building business value in a changing world](#)

materials and that can result in two-tier pricing, under which domestic manufacturers in the producing country have access to materials at lower prices than those charged for exports, thereby hindering the international competitiveness of U.S. manufacturers and creating pressure to move manufacturing away from the U.S. and into the producing country.<sup>13</sup>

The Rand Study also notes a potential ripple effect on U.S. innovation:

The U.S. science and technology base that support manufactured products was built on and depends upon the presence of U.S. manufacturers producing these products from raw and semi-finished materials. Prolonged disruption in the supply of raw and semi-finished materials required by these manufacturers could put the science and technology base in jeopardy, which would further reduce U.S. innovation capability and competitiveness in the development of new, higher-performance products.<sup>14</sup>

Often overlooked is the reality that many metals and minerals are not only critical to manufacturing in their own right, but in many cases, they serve as “gateway” elements to other technology metals critical to innovation. In other words, many high-tech metals are not the targets of primary mining projects, but rather by-products of recovered from the mining of other metals and minerals.<sup>15</sup> Copper, for example, serves as the gateway to molybdenum, rhenium, selenium and tellurium. Zinc is a gateway metal to indium and germanium. These specialty metals and minerals are often byproducts of refining other metals and minerals and are essential for super-alloys, electrical components, and fiber optics, to mention just a few applications that are important in defense applications relied upon by our warfighters.

The U.S. has been slow to develop policies that ensure secure access to the minerals required to supply domestic manufacturers and for economic growth generally. At the same time, countries around the world have increasingly recognized the connection between minerals and economic growth and have developed strategies to ensure access to the minerals that help them compete globally. For example, the European Union’s (EU) “Raw Materials Initiative,” is designed to ensure a sustainable supply of raw materials to increase European industrial competitiveness. As part of that initiative, the EU maintains and routinely updates a list of critical raw materials, which includes various minerals and metals, while duly emphasizing that even those minerals not “classified” as critical must not be neglected.<sup>16</sup> A balanced policy incentivizes and

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<sup>13</sup> 2013 Rand Study – [Critical Materials: Present Danger to U.S. Manufacturing, p. ix](#)

<sup>14</sup> *Id.* at p. 1.

<sup>15</sup> See Daniel McGroarty & Sandra Wirtz, Gateway Metals and the Foundations of American Technology, p. 4 (American Resources Policy Network, Sept. 2012).

<sup>16</sup> 2014 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *On the review of the list of critical raw materials for the*

removes obstacles to new mining activities to support the availability of the metals and minerals for the European economy.

In a similar vein, China, the world's largest consumer of many mineral commodities like copper, zinc and iron ore – and the world's leading producer of rare earth elements – is giving special attention to its “resource security” by making global investments to ensure access to supply. China's “go global” strategy includes investment of \$390 billion in outbound direct investments in the mining sector.<sup>17</sup> Unfortunately, U.S. policies as a whole fail to recognize the importance of domestic minerals manufacturing as an economic driver or as the source of raw materials used in the defense industry. As a result, the U.S. mining industry is burdened with unnecessary regulatory obstacles that risk the overall industry and that provide no measurable environmental benefits.

### **Permitting Delays are the Primary Impediment to the Domestic Mining Industry's Ability to Provide Raw Materials for U.S. Manufacturers and the Defense Industrial Base**

An outdated, inefficient permitting system presents a major barrier to the domestic mining sector's ability to perform to its full potential. The U.S. has one of the longest permitting processes in the world for mining projects. The current permitting process is plagued by uncertainties and delays arising from duplication among federal and state agencies, the absence of firm timelines for completing environmental analyses and failures in coordination of responsibilities between various agencies. In the U.S., necessary government authorizations now take an average of seven to 10 years to secure, placing the U.S. at a competitive disadvantage in attracting investment for mineral development.

Sadly, this is not a new problem, and it is getting worse. Authorities ranging from the National Academy of Sciences to the Department of Energy to international mining consulting firms have identified permitting delays as among the most significant risks and impediments to mining projects in the United States.<sup>18</sup> Most recently, the U.S. Government Accountability Office highlighted the need to streamline the mine permitting process to mitigate supply risks.<sup>19</sup> And these permitting delays have real consequences.

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*EU and the implementation of the Raw Materials Initiative* (available at [http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/crm-communication\\_en.pdf](http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/crm-communication_en.pdf)).

<sup>17</sup> Congressional Research Service, *China's Mineral Industry and U.S. Access to Strategic and Critical Minerals: Issues for Congress*, March 20, 2015 (available at <http://fas.org/sgp/crs/row/R43864.pdf>).

<sup>18</sup> See National Resources Council, *Hardrock Mining on Federal Lands*, National Academy Press (1999); U.S. Department of Energy, *Critical Materials Strategy* (Dec. 2010); U.S. Geological Survey USGS, *the Principal Rare Earth Elements Deposits of the United States—A Summary of Domestic Deposits and a Global Perspective*, 2010; Behre Dolbear, *Where Not to Invest* (2015).

<sup>19</sup> GAO Report 16-699, *Advanced Technologies: Strengthened Federal Approach Needed to Help Identify and Mitigate Supply Risks for Critical Raw Materials*, Dec. 2016 (available at <https://www.gao.gov/products/GAO-16-699>)

A 2015 study,<sup>20</sup> *Permitting, Economic Value and Mining in the United States*, shows how delays in the U.S. mine permitting process can diminish the value of a minerals project. On average, a domestic mining project can lose a third of its value as it waits for the numerous permits needed to begin production, and the longer the wait the greater the chance the mine will no longer be worth the *investment*. In short, lengthy delays in permit reviews compromise the commercial viability of mining projects by increasing costs, reducing the net present value of investments and impairing financing – in much the same way delays impact the viability of different DoD projects. The efficiency and predictability of the permitting process matters in decisions about where to invest.

To attract investment dollars for mining projects, the U.S. needs to provide more certainty in permitting timeframes, similar to other major mining countries such as Canada and Australia. Australia and Canada have modernized their permitting regimes so that the required permits can generally be obtained in two to three years. Importantly, Canada and Australia are known for their rigorous environmental requirements for mining, including environmental reviews similar to those required by the U.S. National Environmental Policy Act (NEPA). The permitting process in these two countries demonstrates that efficiencies can be achieved without sacrificing environmental protection.

The delays that plague the U.S. permitting process clearly play a role in the reduced investment in U.S. mining projects. A recent S&P Global report<sup>21</sup> highlighted that the downturn in U.S. exploration activities reflects a diminished appetite and ability to prospect for new mineral resources in the U.S. Nearly two decades ago, the U.S. attracted almost 20 percent of the world's mining investment. According to S&P's report, in 2016 the U.S. attracted only 7 percent while Canada and Australia attracted 14 and 13 percent respectively. Last year, the U.S. showed the sharpest pullback in exploration, with its budgets falling more than 30%.

Understanding the critical permitting issue facing the domestic mining industry, legislation called the *National Strategic and Critical Minerals Production Act*<sup>22</sup> has been introduced in both the House and Senate that would set “a coherent national policy to create a domestic supply chain of minerals that are of critical importance to United States economic and national security and manufacturing competitiveness.”<sup>23</sup> While this legislation is a step in the right direction, it's incumbent upon DoD and other federal agencies to identify regulations and policies that needlessly delay, prevent, or impede mineral resource development from occurring, further jeopardizing the viability of downstream investments.

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<sup>20</sup> SNL Metals & Mining, [Permitting, Economic Value and Mining in the United States](#), (2015)

<sup>21</sup> [Worldwide Mining Exploration Trends Report](#)

<sup>22</sup> [National Strategic and Critical Minerals Production Act](#)

<sup>23</sup> <https://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=399515>



## **The U.S. Needs a More Efficient Permitting Timeframe to Realize the Domestic Mining Industry's Potential to Supply U.S. Manufacturers and the Defense Industrial Base**

To address supply chain vulnerability and import dependence, we need to proactively address permitting delays for domestic mining projects. This concern extends beyond those in the U.S. mining industry. A 2014 survey of 400 C-suite manufacturing executives found 95 percent of executives are worried that the lag in the permitting process for new mines has a serious impact on their competitiveness.<sup>24</sup> And more recently, broader public support has been voiced for policies that encourage the use of domestic minerals and energy resources to reduce reliance on imports, enhance reliability, and strengthen national security. Sixty-three percent of voters and 75 percent of military families support streamlining the mine permitting process to improve timely access to domestic minerals used by the DoD each year.<sup>25</sup>

Only by addressing our permitting delays can we capitalize on our nation's mineral wealth. The U.S. is blessed with a world class mineral resource base with an estimated value of \$6.2 trillion. The U.S. remains highly prospective, from a geological point of view, with an abundant and diverse mineral potential. According to the U.S. Geological Survey, when it comes to copper, silver, zinc and other mineral commodities key to national defense, what is left to be discovered in the U.S. is almost as much as what has already been found.<sup>26</sup> Moreover, with continuing and never-ending advances in science and technology, miners in the U.S. exemplify best practices with respect to productivity, sustainability and safety.<sup>27</sup>

Solving the permitting problem will also allow the domestic mining industry to contribute even more to the already significant contributions to our economy, society, and quality of life. In 2016, the value added by major industries that consume the \$74.6 billion of minerals produced in the U.S. is an estimated \$2.78 trillion. Mining's direct and indirect economic contribution includes nearly 2 million jobs with wage and benefits well above the state average for the industrial sector. In addition, domestic mining generates \$44 billion in tax payments to federal, state and local governments.

The overarching objectives for streamlining the permitting system for mining should be:

- Minimizing delays;
- Setting and adhering to timelines for completion of permitting process;
- Tracking progress and providing for accountability;
- Avoiding duplicative reviews; and
- Implementing concurrent reviews rather than sequential to expedite the process.

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<sup>24</sup> Edelman Berland Survey September 2014, U.S. Manufacturing Executives: MOE: +4.87%

<sup>25</sup> NMA Domestic Minerals Poll

<sup>26</sup> USGS, *Geology and Nonfuel Mineral Deposits of the United States*, Open File Rep. 2005-1294A, p. 64 (2005).

<sup>27</sup> SNL Metals & Mining, *U.S. Mines to Market*, p. 4 (2014).

Many of these best practices for permitting are drawn from the much under-utilized regulations from the Council on Environmental Quality (CEQ) on making the NEPA process more efficient. CEQ's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, collection of suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning process. See e.g., 40 CFR 1501.7 (Scoping); 1501.8 (Time limits); 1502.20 (Tiering); and 1506.2 (Elimination of duplication). DoD's review should recommend that other federal agencies treat these best practices as mandatory rather than as merely advisory and revise any necessary policies to more clearly align with these best practices.

In addition, DoD should recommend that the Department of the Interior (DOI) immediately rescind its policy related to review of *Federal Register* notices related to NEPA. This agency "clearance process" needlessly adds months to the permit process for mining projects on federal lands as it requires at least 14 separate layers of departmental review of notices developed by state Bureau of Land Management (BLM) offices. The impact of these delays is significant as most mining operations require at least three of these notices per project. As the clearance process routinely takes four months or longer per notice, this policy adds approximately a year of review time for project approvals.

Further, DOI has never adequately explained the need for this review process and it does not appear to result in substantive changes to the submitted documents. In fact, in the mining industry's experience, the review process has never resulted in a final product that differed substantively from what was submitted by the state BLM offices. DOI should rescind this policy and return to the previous process where *Federal Register* notices could be submitted directly by BLM state offices without stopping at DOI for additional reviews.

## **Other Impediments Preventing the Domestic Mining Industry's Ability to Supply the Domestic Manufacturing Sector**

### Access to Minerals

While the lack of inclusive U.S. policies for mineral development and costly, duplicative permitting processes have a significant impact on domestic manufacturers ability to get the raw metals and minerals they need when they need them, another equally important issue is access to the minerals, which are primarily located on federal lands. The federal government manages 632 million acres of public land in the U.S. Access to federal lands for mineral exploration and development is critical to maintain a strong domestic mining industry as these lands historically have, and will continue to, provide a large share of the metals and hardrock minerals produced in this country. Twelve western states are the source of much of our nation's mineral endowment and federal lands comprise almost 40 percent of the land area in those states. Half of that is either

off-limits or under restrictions for mineral development. Unknown amounts of resources on adjacent state and private lands are also sterilized because of federal land restrictions.

While mining is certainly not appropriate on all federal lands, withdrawals from mining activities should not occur without more informed decisions regarding the mineral potential of the underlying lands. Section 204 of the Federal Land Policy and Management Act (FLPMA) governs withdrawals of federal lands and does require mineral assessment of lands proposed to be withdrawn and that any withdrawals should be reviewed periodically to determine if the restrictions continue to be appropriate. Too frequently these assessments are cursory in nature, relying only on existing, often quite dated, information and rarely are they reviewed. Other times, the withdrawals are simply not justified by any policy rationale. A recent example is DOI's proposed withdrawal of 10 million acres of federal lands in the western U.S.

The 10 million acre withdrawal would be the largest ever in the history of the FLPMA. The department maintains the withdrawal is necessary to conserve sage grouse and its habitat. Mining, however, is not even considered a major threat to the bird or its habitat as evidenced by the department's own supporting documents, which instead point to wildfires and invasive species as the greatest threats. The draft Environmental Impact Statement for the withdrawal candidly acknowledges that even under the "No Action" alternative, the reasonable foreseeable acreage disturbance associated with mining activities is estimated to be less than 0.1% of the total withdrawn area.

Another proposed withdrawal in Northern Minnesota was clearly motivated by politics rather than science as the previous administration sought to preclude any future mineral exploration or development without evaluating any specific mine permit. The area, known as the Duluth Complex, is a world class mineral deposit containing copper, nickel and precious metals. The withdrawal was proposed just days before President Obama left office and would have disastrous impacts on the already fragile economy of Northern Minnesotans who stood to gain thousands of potential mining jobs, billions of dollars in future investment, and billions in future revenues for the state's education system.

To remove a significant impediment to the domestic mining industry's ability to flourish and supply needed minerals and metals, DoD should recommend that DOI issue a policy to ensure all proposed withdrawals comply with FLPMA, including FLPMA's mandate that Congress must weigh in on all withdrawals of more than 5,000 acres. Clearly, FLPMA sec. 204(c) provides for such a role for Congress. While that provision is unconstitutional in its implementation, the intent of the act is clear. It is uncontroverted that had Congress known it was not able to reject large-scale withdrawals by concurrent resolution, it would not have enacted the section as written and would not have granted the authority to withdraw more than 5,000 acres. DOI needs to clarify that the department will adhere to this congressional mandate.

U.S. Environmental Protection Agency's Unnecessary and Duplicative Financial Assurance Requirements for Mining Projects

Producers of domestic minerals and metals operate within a complex and comprehensive framework of state and federal laws and regulations that address every aspect of modern mining from exploration to development, operation, reclamation, closure and post-closure. This framework is designed to minimize environmental impacts and prevent harmful releases. Additionally, mining companies commit tens to hundreds of millions of dollars to ensure that money is set aside to properly close sites and in the unlikely event of a release, to monitor and remediate any long-term environmental issues.

Despite this comprehensive framework of laws and regulations, the U.S. Environmental Protection Agency (EPA) is currently engaged in a rulemaking process to implement a suite of unprecedented, duplicative, and economically burdensome financial assurance requirements under Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund). Pursuant to this law, EPA was required more than 30 years ago to identify "high risk" industry sectors, assess their risk of future hazardous substance releases, estimate the cost of cleanup of those releases, and require companies to set aside capital to guarantee that it can pay for any necessary cleanup. Seven years ago, EPA identified the hardrock mining industry as the first in line for such a regulation, followed by the chemical manufacturing, oil and gas, and electric utility sectors.

Protecting the public and ensuring that taxpayer money is not used for environmental cleanups is a respectable goal. However, EPA ignores the fact that during its 30 years of inaction, state and federal programs have evolved to address the same risks EPA is now targeting and ensure functionally equivalent protections to the public and the environment. A duplicative federal program under EPA's control would effectively displace these successful programs.

Furthermore, the agency repeatedly ignored state and federal government agencies with expertise in regulating the mining industry, summarily dismissing their concerns over preemption and duplication instead of engaging in a robust discussion and analysis of programs that have evolved over the last 30 years. Most importantly, throughout its rulemaking process, EPA failed to make the requisite finding that modern mining facilities actually pose a risk of becoming future Superfund sites that would require expenditure of public funds for cleanup costs. As such, this rule is simply not justified and the regulatory burdens it will impose could jeopardize the viability of the domestic mining industry. Overall, EPA estimates that the rule will require facilities to secure approximately \$7.1 billion in new financial responsibility obligations. Using EPA's own numbers, the rule comes with a \$171 million annual price tag to industry compared to potential annual savings for the government of approximately \$15.5 million in liability.

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Given the fatal flaws in the rulemaking, DoD should recommend that EPA initiate a review of the proposed rule, undertake a robust examination of existing state and federal programs, and determine that these programs render the rulemaking unnecessary.

### **Conclusion**

NMA urges DoD as it moves forward with implementation of E.O. 13806 to review how permitting and regulatory burdens on the hardrock mining industry increase the supply chain vulnerabilities of the defense industrial base and provide recommendations for improvements. If you have any questions regarding this letter, please contact me at [ksweeney@nma.org](mailto:ksweeney@nma.org) or Justin Prosser at [jprosser@nma.org](mailto:jprosser@nma.org).

Sincerely,

A handwritten signature in cursive script that reads "Katie Sweeney".

Katie Sweeney